IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 20-09-2007

CORAM

THE HONOURABLE MR.JUSTICE S.PALANIVELU

CRIMINAL REVISION CASE No.1271 OF 2007

Major K.Mathews ... Petitioner

-vs-

State, represented by :
The Inspector of Police, L&O,
R-5, Virugambakkam Police Station,
Chennai-600 093. ... Respondent

Revision against the order, dated 31.07.2007, made in Criminal M.P.No.3507 of 2007 in S.C.No.30 of 2006 on the file of I Additional Sessions Judge, Chennai.

For petitioner : Major K.Mathews,
Party in person.
For respondent : Mr.A.Saravanan,
Govt.Advocate (Criminal Side).

J U D G M E N T

This revision is filed against the order of dismissal, passed in Crl.M.P.No.3507 of 2007 in S.C.No.30 of 2006 on the file of I Additional Sessions Judge, Chennai, whereby the prayer of the petitioner for discharge was rejected.

2. Briefly stating, the facts are as under :

2.1. Petitioner is accused before the I Additional Sessions Judge, Chennai, in Crime No.675 of 2005 of R-5 Virugumbakkam Police Station. The said case is pending on the file of the said Court in S.C.No.30 of 2006. He was chargesheeted under Sections 341, 324 and 307 read with Section 30 of the Indian Arms Act, 1959.

2.2. The case of the prosecution is that on 21.05.2005 at about 08.00 p.m., while the de facto complainant Manivannan was proceeding on walking, leading his pomaraine dog, there was some altercation between the petitioner and the said Manivannan. On account of previous ill-will regarding the affairs of the house owners' association, the petitioner

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asked Manivannan not to stand near the entrance of his house, for which Manivannan replied that if he came near the entrance, he might question. However, the petitioner got enraged and told him that if he was dare enough, he might stand there. Thereafter, he entered into his house and came out with a revolver. While the de facto complainant was about to leave the place towards his house, the petitioner gave out that only if he (Manivannan) was eliminated, he could live peacefully and, so saying, proceeded to shoot Manivannan by means of his revolver. Since the de facto complainant warded off the shot, he received injuries of the bullet on his right forearm and right elbow. The occurrence is said to have taken place in front of the house of the petitioner.

2.3. After laying charge sheet, the IX Metropolitan Magistrate, Saidapet, Chennai, took up the case in P.R.C.No.147 of 2005 and committed the same to the Sessions Court, Chennai, which was transferred to I Additional Sessions Judge, Chennai.

2.4. Before the trial Court, the petitioner filed a petition under Section 227 Cr.P.C. to discharge him from the case and the said petition suffered dismissal on 31.07.2007. On the same day itself, the said Court framed charges against the petitioner for the offence under Section 307 IPC read with Section 30 of the Indian Arms Act.

3. The main stay of the petitioner before the trial Court was that there were no materials to rope him into the allegations, levelled by the prosecution and, hence, he was entitled for discharge.

4. In the petition for discharge, the petitioner stated that he was serving in the Western War Field as a 'Company Commander' in the rank of Captain during the India-Pakistan War of 1971. It was further stated therein that while he was pouring water to the plants maintained by him on either side of the road in front of his house by taking a hose from his car shed, the de facto complainant came towards his house with a pomaraine dog and picked up an altercation with him and since he hurled filthy language at him, besides pulling him down, he fell down on the road and sustained internal injuries on his lower back and, as the de facto complainant aimed a blow on the head of the petitioner, apprehending imminent danger to his life, on sudden and grave provocation, he picked up a revolver from his pants pocket and fired a single shot in self defence. The allegations in the petition further proceed to the effect that the de facto complainant appeared to have sustained injury to his right forearm and that there was no intention on the part of the petitioner for misusing the revolver or causing any grievous hurt or death to the de facto complainant, which would be evident from the fact that he did not fire a second shot, even though the chamber of the revolver was still containing five more cartridges.

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5. The above said versions in the petition for discharge would clearly expose the admission on the part of the petitioner, explaining his act at the time of occurrence.

6. In addition to the aspects relating to this case, in the petition for discharge, the petitioner levelled so many allegations against one T.V.Ganesh, City Public Prosecutor, stating that he was acting against his interest in the court proceedings.

7. While adverting to the present petition, the petitioner requests for discharge on certain grounds. The first one is with regard to the accident register of the injured/de facto complainant, which shows the following injuries :

(1) Multiple abrasions - over right forearm
- right arm; and
- right chest.

(2) Tenderness over right forearm

X-ray was taken to the injured, which shows that there was no fracture. Doctor was of the opinion that the injured suffered simple injuries.

8. In this regard, the petitioner would vehemently argue that if the injured were stated to have been shot by the revolver, the bullet would not have caused the above said abrasions, but should have entered into the body, causing grievous injury.

9. No doubt, if the bullet was pumped into the body by a shot from the revolver, definitely, there would have been a grievous injury. As far as the nature of injury caused to the de facto complainant is concerned, in view of the aforesaid admission of the petitioner, the aspect, as to the way in which the injured could have suffered, would be ascertained only at the time of trial by examination of witnesses, including the doctor. The intention of the parties could also be found out by appreciation of oral evidence on record. According to the petitioner, the injuries on the person of the de facto complainant were not caused by a shot from revolver, but, it is to be borne in mind that the petitioner himself conceded that he shot a fire at the de fact complainant.

10. The petitioner relied upon the following decisions of the Hon'ble Supreme Court :

(i) State of Bihar v. Ramesh Singh, AIR 1977 SUPREME COURT 2018, in which, it has been held as under :

> "Reading Sections 227 and 228 together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial, the truth, veracity and effect of the

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> evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under S.227 or S.228 of the Code. At that stage, the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction."

(ii) Union of India v. Prafulla Kumar Samal, AIR 1979 SUPREME COURT 366 = 1979 CRI.L.J.154, wherein, it is observed as follows :

> "The Judge, while considering the question of framing the charges under Section 227 of the Code, has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out."

11. Armed with the above said authorities, the petitioner would contend that the above decisions have formulated guidelines in the matter under Section 227 Cr.P.C. It is also his argument that strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial.

12. Pertinent it is to state, that, at the initial stage, if there is a strong suspicion, which leads the Court to think that there is a ground for presuming that the accused has committed an offence, then, it is not open to the Court to say that there is no sufficient ground for proceeding against the accused.

13. The petitioner also garnered support from the following decisions of the Hon'ble Apex Court :

(i) M/s.Pepsi Foods Ltd. v. Special Judicial Magistrate, 1998 SUPREME COURT 128, in which, it is held that when the complaint does not make out any cause against the accused, the accused can be discharged at any stage of the trial, if the Magistrate considers the charge to be groundless.

(ii) Dilawar Babu Kurane v. State of Maharashtra, AIR 2002 SUPREME COURT 564, wherein, it is observed as under :

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> "12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

14. I have heard the submissions of both sides with rapt attention and also followed the principles laid down in the decisions of the Hon'ble Supreme Court.

15. In order to consider the proceedings in favour of the petitioner, there should be no ground in the complaint to implicate him in the occurrence. However, the fact remains that the petitioner has admitted the incident, but disputes the manner of assault. In the view of this Court, the contention of the petitioner is not tenable, for the reason that there are sufficient prima facie materials available against him, for framing charges. Whether the revolver was used for a purpose other than the one for which it was permitted would be determined only after recording evidence.

16. The version of the petitioner was that he took away the revolver from his pant pocket at the time of occurrence, on getting a sudden provocation at the behaviour of the de facto complainant, but, the

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prosecution version would go to the effect that after giving out certain words against the de facto complainant, the petitioner entered into his house, came back with the revolver and then fired at the de facto complainant. The veracity of these circumstances could not be decided by this Court in these proceedings. No doubt, the licence issued to the petitioner for the revolver was in force up to December,2005. The petitioner filed a private complaint against the de facto complainant, Inspector of Police, K.M.Varghese, K.M.Samuel and S.Vijayakumar, Advocate, who was the lawyer in C.C.Nos.1076 and 1077 of 1997, for the alleged offences under various sections, namely, 120B, 500, 501, 506 (1) r/w 34 I.P.C. Further, he also initiated legal proceedings against the City Public Prosecutor, by name, T.V.Ganesh, stating that the above said persons connived together and entangled the petitioner into the offences. If that be so, the motive for the alleged implication has also to be elicited at the time of final hearing of the case.

17. Only if the Court finds that there are no prima facie materials available on record, the accused would be entitled for discharge. But, in this case, ample materials are available to indicate the guilt of the accused and he has got every opportunity to agitate and disprove them during the course of trial. Hence, at this stage, no grounds are made out to discharge the petitioner from the case. As such, this revision is dismissed. Consequently, the connected Criminal M.P.No.1of 2007 also stands dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Inspector of Police, L&O,
R-5, Virugambakkam Police Station, Chennai-600 093.
2.The I Additional Sessions Judge, Chennai.
3. -do-Thro' The Principal Sessions Judge, chennai.
4. The Public Prosecutor, High Court, Madras.

1 cc To Mr.K.Mathews, Party -in- person, SR.58704.

CRL.R.C.No.1271 OF 2007

TEJ(CO)
RVL 01.10.2007

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